LLOYD'S LIST LAW REPORTS

Reprinted (with additions) from
"LLOYD'S LIST and SHIPPING GAZETTE."

MICHAELMAS SITTINGS, 1924.

Edited by
J. A. EDWARDS,
of the Middle Temple, Barrister-at-Law.

Vol. 20.

LONDON:
PRINTED AND PUBLISHED BY LLOYD'S
AT THE ROYAL EXCHANGE, E.C. 3.
1924

CONTENTS.

NOTE:—These reports may be cited as "20 Ll. L. Rep."

CONTENTS—*continued.*

CONTENTS—*continued.*

CONTENTS—*continued.*

LLOYD'S LIST LAW REPORTS.

REPRINTED (WITH ADDITIONS) FROM

LLOYD'S LIST

AND

SHIPPING GAZETTE.

Edited by J. A. EDWARDS, of the Middle Temple, Barrister-at-Law.

VOL. 20. No. 1.] THURSDAY, NOVEMBER 6, 1924. [BY SUBSCRIPTION

HOUSE OF LORDS.

Tuesday, July 22, 1924.

LA BANQUE INTERNATIONALE DE COMMERCE v. GOUKASSOW.

Before Viscount CAVE, Lord FINLAY, Lord ATKINSON, Lord SUMNER and Lord WRENBURY.

Procedure — Action by Russian bank — Whether bank dissolved by Soviet decrees — Contract by defendants with Paris branch of plaintiff bank—Whether action maintainable in England.

In this case the plaintiff bank appealed from a judgment of the Court of Appeal (16 Ll.L.Rep. 126) affirming a judgment of Swift, J., deciding against them upon their claim for £40,000 odd, alleged to be due from the defendant, Mr. A. O. Goukassow, a Russian, who at the time the action was brought was resident in this country.

Mr. Alexander Neilson, K.C., and Mr. Harold Murphy (instructed by Messrs. Stephenson, Harwood and Tatham) appeared for the appellants; and Mr. Stuart Bevan, K.C., and Mr. Rayner Goddard, K.C. (instructed by Messrs. Coward and Hawksley, Sons and Chance) represented the respondent.

Plaintiff bank was formed in May, 1869, under the sanction of Russian laws of that date, and it operated and carried on business as a bank up to December, 1917. From time to time the bank opened branches outside Russia, one branch being opened in Paris some time before 1912. From that year and possibly before the defendant was dealing with the Paris branch. As a result of the transactions between him and the branch, he on Dec. 14, 1920, it was claimed, owed a sum of £44,396. On Dec. 15, 1920, the plaintiff bank, describing itself as a foreign banking company incorporated according to the laws of Russia, issued a writ in this action against the defendant. The defence was that the bank, in consequence of various Soviet decrees, had ceased to exist, and was not competent to bring the action in this country.

Plaintiffs' case was that the Paris branch continued to exist as a banking concern, where the physical control of the Soviet Government could not touch it, and that the Paris branch, as the accredited representatives of the bank, were entitled to bring the action.

Swift, J., held that the action was not maintainable as the plaintiff bank must be regarded in this country as no longer existent. This decision was upheld by the Court of Appeal, who followed their decision in Russian Commercial & Industrial Bank v. Le Comptoir d'Escompte de Mulhouse and Westminster Bank (16 Ll.L.Rep. 112).

JUDGMENT.

Viscount CAVE, in giving judgment, said the essential facts in this case were similar to those discussed in the Russian Commercial & Industrial Bank v. Le Comptoir d'Escompte de Mulhouse, &c., and that the decision (19 Ll.L.Rep. 312) in that case governed the present appeal. That being so, he thought that the appellants were entitled to succeed.

Lord FINLAY, Lord ATKINSON, Lord SUMNER and Lord WRENBURY concurred.

Judgment was accordingly entered for the appellant bank for the amount of their claim, with costs here and below.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Thursday, July 24, 1924.

WARNER QUINLAN ASPHALT CO. v. THE CROWN.

Requisitioned ship—Claim by charterers for compensation — Petition for leave to appeal from judgment of Supreme Court of Canada dismissed.

This was a petition of suppliants, oil refiners and dealers of New York, for leave to appeal from a judgment of the Supreme Court of Canada dismissing their claim against the Crown for the requisitioning of the oil tank ship *G. R. Crowe*.

According to the petition, the ship was chartered to the petitioners by the owners, the Montezuma Transportation Co., Ltd., for 18,500 dols. a month. On Feb. 8, 1917, she was requisitioned by the Government for war purposes and was not returned to the petitioners until Apr. 7, 1919. They were thus deprived of the use of her for that period; and as a result had to pay a much higher price for oil in the open market, while the cost of the shipment of oil was greatly increased. The petitioners accordingly brought a claim in the Exchequer Court of Canada for 1,269,074 dols.

It was contended for the Crown that the petitioners had no right of claim either at common law or by statute.

The petitioners on the other hand urged that the charter-party constituted a demise of the ship and that they were entitled at common law and under statutes to compensation.

The claim was dismissed by the Exchequer Court and also by the Supreme Court, who decided that the charter-party did not constitute a demise and that the petitioners had no legal claim.

It was contended for the Crown in the Supreme Court that the War Measures Act did not constitute a remedy; but the petitioners submitted the contrary view and urged that if it did not then there must be some other remedy. It was the intention of the Canadian Parliament that there should always be compensation for the requisitioning of property; and petitioners now urged that that was a universally recognised and applied canon of law.

Their Lordships refused leave to appeal.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Friday, Oct. 24, 1924.

GREAT LAKES STEAMSHIP COMPANY v. MAPLE LEAF MILLING COMPANY, LTD.

Before Viscount CAVE, Lord DUNEDIN, Lord CARSON, Lord BLANESBURGH, and Mr. Justice DUFF of the Supreme Court of Canada.

Contract to partly unload vessel immediately upon arrival at port on Great Lakes — Whether concluded — Delay in unloading—Fall of water in harbour—Claim for damage to ship by settling upon derelict anchor.

Judgment was delivered to-day in this appeal, which arose out of an action instituted by the appellants to recover 40,516 dols. in respect of damage to their ship, the *John Dunn, Jr.*, which occurred while she was at her berth at Port Colborne, Lake Erie, in December, 1918. The vessel settled down on a large anchor lying at the bottom of the harbour and suffered considerable damage to her plates. The appellants secured judgment in the Court of first instance, but this was reversed by the Appellate Division of the Supreme Court of Ontario.

The previous proceedings in the appeal were reported at 19 Ll.L.Rep. 208.

Mr. Wallace Nesbitt, K.C., of the Canadian Bar, and Mr. Geoffrey Lawrence (instructed by Messrs. Johnston Grant, Dods & Grant, of Toronto, Messrs. Collyer-Bristow & Co. agents) were Counsel for the appellants; while Mr. D. L. McCarthy, K.C., and Mr. Harcourt-Ferguson, K.C., of the Canadian Bar (instructed by Messrs. Millar, Ferguson & Hunter, of Toronto, Messrs. Charles Russell & Co. agents) represented the respondents.

JUDGMENT.

Their Lordships' judgment, delivered by Lord CARSON, was as follows:—

The appellants are a steamship company having their operating office at Cleveland, Ohio, U.S.A., and are the owners of the *John Dunn, Jr.*, a freight vessel sailing on the Great Lakes lying between Canada and the United States. The respondents are one of the largest milling companies in Canada, and were the owners at Port Colborne, which is situated at the easterly end of Lake Erie, of an elevator and flour mill.

In the year 1918, under the provisions of certain war measures having for their object the mobilisation of tonnage on the Great Lakes to facilitate and expedite the transportation of grain from Western Canada to the seaboard for exporting purposes, the Winnipeg Chartering Committee was established by the owners of vessels and the shippers of grain; and this Committee controlled the allotment to shippers

of all tonnage sailing from the Canadian ports of Fort William and Port Arthur on Lake Superior. Under similar arrangements like tonnage of the United States Registry available for the carriage of grain was mobilised and allotted by the United Grain Forwarders Committee; and arrangements were made between these two committees by which the Winnipeg Chartering Committee would allot the tonnage and issue the charter to the Canadian shipper.

In the month of November, 1918, the respondents requested the Winnipeg Chartering Committee to make an allotment of tonnage to carry grain from Port Arthur and Fort William for winter storage at Port Colborne, where, as already stated, the respondents had an elevator and a flour mill. It is essential to note that the harbour at Port Colborne has, under normal conditions, a depth of approximately 22 ft., but under the influence of an easterly or northerly wind the level of the water in the harbour, particularly in the fall of the year, is sometimes lowered by as much as 3 ft. 4 in. The harbour bottom is rock and the harbour is owned by His Majesty as represented by the Government of the Dominion of Canada.

In pursuance of the request from the respondents the Winnipeg Chartering Committee applied for permission to send the *John Dunn, Jr.* to Port Colborne under a grain charter for winter storage. The appellants, the owners of the *John Dunn, Jr.* at first refused such permission, having regard to the question of safety owing to the tendency to the lowering of the water level as aforesaid, as the *John Dunn, Jr.*, when loaded, had a depth of 20 ft. This is apparent from the telegrams of Nov. 22 and 23, 1918, passing between the United Grain Forwarders and the Winnipeg Committee. On Nov. 22 the Winnipeg Committee sent a telegram in the following terms:—

> Will take two boats for early December loading Bay Colborne. Won't send anything to Colborne if harbour not safe. You understand all boats at Colborne are lightered on arrival to safe draft.

and on Nov. 23 the United Committee wired to the Winnipeg Committee as follows:—

> "Mr. Ayres" (the manager of the appellants) "says he is willing to give you Colborne option on *Dunn, Norway* and *Durston* . . . . it is also to be understood in event you send these vessels to Colborne, that they are to be lightered on arrival to fifteen feet draft."

Eventually terms were agreed upon with the representative of the appellants; and a charter was granted by the Winnipeg Chartering Committee to the respondents on Nov. 28, 1918, in the words and figures following:—

> Winnipeg, Man., Nov. 28, 1918.
> s.s. *John Dunn, Jr.*
>
> This confirms to you charter of the steamer *John Dunn, Jr.* for a full and complete load of wheat at Fort William—Port Arthur, Ont., about the 30th November, 1918, for a storage load to Port Colborne. The rate of freight from Fort William to Port Colborne to be six cents (6 c.) per bushel of wheat, payable in American exchange.
>
> It is your option to store grain in this vessel until the 1st April, 1919, if desired, but not later than this date.
>
> Five and one-half cents (5½ c.) per bushel of wheat is to be paid upon the arrival of the vessel at Port Colborne, on the complete cargo as loaded, and the balance, namely, one-half cent (½ c.) per bushel to be paid when the cargo is finally unloaded. On arrival of the steamer at destination it is to be lightered to a safe winter draft. The freight on the lightered quantity to be the same as the winter storage rate. The unloading and elevating charges on the entire cargo, as loaded, to be at the regular summer tariff rate.
>
> It is understood that you are to pay all expenses in connection with ice work and moving of the boat while she is at Fort William—Port Arthur, also that you are to pay any ice-cutting charges and other expenses in connection with moving the boat while she in the port of Port Colborne. On arrival of the vessel at Port Colborne, she is to proceed to the elevator immediately to lighter, and then proceed at once to her winter berth.
>
> It is understood that we will cover the marine, outturn and storage insurance.
>
> (Signed) Winnipeg Chartering Committee.
> Per A. E. Spendlove.
>
> To:—
> The Maple Leaf Milling Co., Ltd.

There was some argument before the Board that this document did not constitute a contract between the appellants and the respondents, but as no answer was given or any objection made to the terms by the respondents, and as it was upon the terms of such contract that the appellants supplied the *John Dunn, Jr.*, there can be no doubt that this letter constitutes the contract entered into between the parties.

The vessel was loaded with 367,890.40 bushels of wheat at Port Arthur and Fort William and proceeded on her voyage, clearing from Port Arthur on Dec. 2, 1918, and arriving in the harbour of Port Colborne on Friday, Dec. 6, at 12 15 p.m. Upon her arrival the master of the *John Dunn, Jr.* found that the berth alongside the respondents' elevator, to which under the charter she was to proceed, was occupied by a vessel called the *Riverton*, and the *John Dunn, Jr.* therefore drew up beside her. The master was told that the *John Dunn, Jr.* must await her turn and could not be lightered until the *Riverton* and another ship called the *Reiss*, which was also waiting, had completed their lightering; and, further, that the respondents could not proceed with the lightering of the *John Dunn, Jr.* probably for another three or four days, as the elevator was full and space had to be made by grinding the wheat into flour, whereupon the master of the *John Dunn, Jr.* under protest moved his vessel over beside the

Government Dock to wait until the respondents would be ready to lighter her. She was then drawing about 20 ft.

On Monday, Dec. 9, the *John Dunn, Jr.* took up her position in the berth beside the respondents' elevator, the *Riverton* and the *Reiss* having been got out of the way; and the master reported to the respondents' superintendent that his vessel was in position to be lightered. The superintendent, however, replied that the respondents could not lighter her before the following Thursday, although the respondents might be able to take some grain out of the vessel on Wednesday. The master then inquired if the vessel would be safe where she lay in the berth in front of the elevator in the event of the water lowering, or would it be necessary for him to get her off to protect himself. The answer of the respondents' superintendent was "This harbour was all drilled, blasted and chiselled before this or the Government elevator sank a crib, and your ship is just as safe lying alongside the wharf as she would be if she could get into my office on this floor providing you do not attempt to move her." In consequence of this assurance the master of the *John Dunn, Jr.* left his ship moored at the respondents' wharf.

Upon returning to the ship at 11 30 on that same evening he found that by reason of the lowering of the water the ship, not having been lightered even in part, had settled upon the bottom. It was subsequently ascertained that in settling down she had rested upon a large anchor, the thickest part of which stood 2 ft. above the floor of the harbour. By reason thereof the ship had sustained very serious injuries to her hull, and she was leaking and had listed outboard—that is to starboard—and the total amount of damages sustained by the appellants was alleged to be the sum of 40,516.68 dols., which is the sum claimed in this action by the appellants from the respondents. The fact that this anchor was lying upon the bottom was admittedly unknown to anyone. It had apparently been dropped by some other vessel which had occupied the berth.

It is necessary to note that the dock at Port Colborne, which belonged to H.M. the King in the right of the Dominion of Canada, was leased to the respondents for 21 years from May 1, 1909, the said lease being renewable at the end of each succeeding term of 21 years, and there was excepted from the said lease a strip 12 ft. in width along the face of the west, south and east sides of the said dock, which was open to the use of the public jointly with the respondents. The elevator which was erected by the respondents was equipped, among other things, with a "leg" which stretches across this 12 ft. strip to the holds of vessels placed alongside the dock for the purpose of conveying the contents of the vessels to the elevator.

The case was tried before Mr. Justice Middleton in the Supreme Court of Ontario, who, by his judgment on Apr. 19, 1922, decided in the appellants' favour, holding that it was the duty of the respondents to make sure that the condition of the harbour at the place of unloading was safe for that purpose, and that having invited those in charge of the vessel to station it where it was when it met with the injury, the respondents warranted that that place was a safe one in which to lie pending the discharge of the cargo, and that the law applicable to the case was determined in the appellants' favour by the decisions of the *Moorcock*, 14 P.D. 64, and the *Bearn*, [1906] P. 48. From this decision the defendants (the present respondents) appealed to the Appellate Division, who, on June 11, 1923, reversed the decision of Mr. Justice Middleton, Hodgins, J.A., dissenting. The majority in the Court of Appeal attempted to distinguish the cases relied upon by the trial judge, holding that there was no such duty cast upon the respondents as had been found by the trial judge. They also held that on the question of breach of contract "to lighter immediately," the damage was too remote to be recoverable. Hodgins, J.A., however, held in favour of the appellants on both points. Their Lordships cannot agree with the judgment arrived at by the majority in the Appellate Court. Their Lordships are of opinion that the document already referred to of Nov. 28, 1918, must be held to be the contract upon which the appellants agreed to charter their vessel to the respondents. This contract specially provided that "on arrival of the steamer at destination it is to be lightered to a safe winter draft," and also that "on arrival of the vessel at Port Colborne she is to proceed to the elevator immediately to lighter and then proceed at once to her winter berth." The actual berth to which the *John Dunn, Jr.* was to go on arrival was designated, namely, the dock in which the respondents' elevator stood, and consequently she went there as soon as she could.

Upon the facts already stated, not only did the respondents fail to proceed with the lightering of the vessel upon her arrival, but she was delayed from Dec. 6 to Dec. 9, not because other vessels were there before her but because the respondents' elevator was so full that they could only take out each day an equivalent to what they could grind up, say, 40,000 bushels a day, and, as stated by Hodgins, J.A., this was continued from Dec. 6 to Dec. 9, so that both the delay in bringing the vessel to the elevator and in lightering her when there, was directly due to the respondents, in that their elevator capacity was so occupied with grain from other vessels that they could not and did not unload the *John Dunn, Jr.* immediately on her arrival in port or on her reaching the designated dock.

There can be no doubt that it was from breach of the contract immediately to lighter that the vessel grounded by reason of the lowering of the water, the very thing which it was anticipated might occur, and which rendered the immediate lightering so important, and it must, in their Lordships' opinion, be held that it was the breach of contract in not lightering the vessel which

was the immediate cause of the damage, and the fact that such damage might not have occurred if the anchor had not been sunk can make no difference. If grounding takes place in breach of contract, the precise nature of the damage incurred by grounding is immaterial.

There was some argument before their Lordships on behalf of the respondents that the words in the contract "on arrival of the steamer at destination it is to be lightered to a safe winter draft," or the other words "on arrival of the vessel at Port Colborne she is to proceed to the elevator immediately to lighter," did not contemplate in the minds of the contracting parties anything more than a contract to unload within a reasonable time, having regard to the exigencies of the previous engagements and the normal carrying on of the business. Their Lordships cannot agree with this construction of the contract, where the words are clear and explicit, and where the very objects for which these words were inserted were likely to be frustrated if any such delay as was contended for as reasonable in the present case was to be held justified.

Having come to this conclusion upon the contract and the subsequent facts, their Lordships do not think it essential to examine the case from the point of view upon which it was decided by the learned trial judge, but their Lordships must not be taken as holding that they dissent in any wise from the views of the learned trial judge or that they desire to throw any doubt upon the soundness or the applicability of the decision in the *Moorcock* case, *sup.*

Their Lordships are, therefore, of opinion that the appeal should be allowed and that the order of Mr. Justice Middleton of Apr 19, 1922, should be restored and that the appellants should have the costs here and below; and they will humbly advise His Majesty accordingly.

ADMIRALTY DIVISION.

Tuesday, Oct. 21, 1924.

THE "MATATUA."

Before Mr. Justice ROCHE, sitting with Captain T. GOLDING, C.B.E., and Captain A. H. RILEY, Elder Brethren of Trinity House.

Salvage — Pilot's services to large steamer after collision in River Thames—Risk to pilot's reputation considered.

In this case, Mr. William Lionel Dyce, a Trinity House pilot, claimed remuneration for salvage services alleged to have been rendered by him to the steamship *Matatua*, her cargo and freight, in the River Thames, between Mar. 24 and Apr. 3, 1924.

Mr. L. Batten, K.C., and Mr. E. A. Digby (instructed by Messrs. B. & F. Tolhurst, of Gravesend, Messrs. Botterell & Roche, agents) appeared for the plaintiff; and Mr. A. D. Bateson, K.C., and Mr. G. P. Langton (instructed by Messrs. Ince, Colt, Ince & Roscoe) represented the ship, cargo and freight.

On the early morning of Mar. 24, 1924, the *Matatua*, when bound from London to New Zealand with general cargo, was in collision with the steamship *American Merchant*, in the Lower Hope Reach, River Thames. The *Matatua* was extensively damaged. The plaintiff was her pilot, and he alleged that after the vessel grounded at the entrance to Hole Haven Creek, where her position was extremely critical, she was taken to and placed on the Mucking Flats, and subsequently was removed to Tilbury Dock, all by his advice and under his directions.

The plaintiff claimed that by reason of his services the *Matatua* and her cargo were saved from certain total loss. Had the vessel remained ashore off Hole Haven she must, he alleged, have become a total wreck, and in deciding to make the attempt to reach the Mucking Flats he undertook grave risk and a heavy responsibility. His skill, enterprise, local knowledge and good seamanship resulted not only in rescuing the *Matatua* from a position of danger, and finally in placing her in a position of safety, but did so with a minimum amount of damage to other property.

The defendants admitted that the plaintiff rendered salvage services, and that he assisted with his local knowledge, but denied that he undertook a grave risk or incurred heavy responsibility. The *Matatua*, they said, remained under the command and control of her master and officers, and all the measures adopted were taken with the authority and consent of the master and on his orders. The defendants specifically denied that by reason of the plaintiff's services the *Matatua* was saved from total loss. At no time, they averred, was the vessel in serious danger.

The defendants brought into Court £700 in respect of the plaintiff's claim. The value of the *Matatua*, with her cargo, was £278,000.

Wednesday, Oct. 22, 1924.

JUDGMENT.

Mr. Justice ROCHE, in giving judgment, said: Mr. Bateson, I have consulted the Elder Brethren on the view I have formed of this case; and although I should like to hear you I do not think that I need. I think the tender is enough.

The suit is a claim to salvage by the plaintiff who at all material times was pilot of the defendants' steamship *Matatua*. The *Matatua* was, on Mar. 24 of this year, in the early morning, in collision in the Thames with another large steamer, the

American Merchant, The *Matatua* was proceeding down-river and the *American Merchant* was proceeding up-river.

The two came into collision under circumstances and at speeds which caused the *American Merchant* to penetrate deeply into the port bow of the *Matatua* and cut into her for many feet, so that the stem of the *American Merchant* reached the amidships line of the *Matatua*. The water freely entered the forehold of the *Matatua* and cargo came out of the rent. For a very considerable period the *American Merchant* was locked in the *Matatua*; and during part of the time in which the present services were rendered the position of the vessels and the situation was such that indisputably, and by admission on the pleadings, the services rendered by the plaintiff ceased to be mere pilotage services and became salvage services; and in my judgment, having regard to the advice I have received, which is in entire concurrence with the views I am about to express, the services were services of a high order.

The real, the only question in the case is whether—the defendants having pleaded that as to the claim—their contention that, on any view of the facts, the sum of £700 which they have paid into Court is sufficient to satisfy the claim, is not well founded. I think it is; and I so hold. I will not say it is an excessive sum, but I think it is enough.

The condition of the *Matatua* was such that she was in a serious predicament. She was making water freely in the forehold, and water was apparently free to enter when the *American Merchant* withdrew from the hole. The bulkhead between Nos. 1 and 2 holds was sprung and buckled, so that some water entered No. 2 hold.

At the same time I am satisfied that at no period could the *Matatua* be said to have been in imminent danger of sinking and becoming a total loss, but she was in a position in which she was in a serious predicament and she was in an awkward situation. With that situation the plaintiff dealt with great skill, and he never went wrong, as far as I could see. From beginning to end, the proper thing was done. He let the vessel drift down the river on the ebb tide, and bring up as best it could at Hole Haven. That was the first step. There the *Matatua* was against the bank rather than upon the ground. She was hung up by the stern and did some further injury to herself, to the rudder.

When the tide flowed the best thing again was done. He let her drift up, attended and steered by tugs, to the Mucking Flats, and put her on the ground there. That step was taken on the advice of the pilot. Ultimately the responsibility for the decision rested upon the captain, but morally and in a nautical sense the responsibility for that decision did, I think, rest on the pilot. He was the initiator of it, and he took the decision, in spite, I will not say of an objection, but of some caution the other way, from the gentleman who there was representing the Port of London Authority. That gentleman pointed out that the traffic of the river might be impeded if the *Matatua* sank, not where she was at Hole Haven next the bank, but on the way up to the Mucking Flats. It follows, in my judgment, and as I am advised, that there was no imminent or immediate danger of her sinking in either place: but as far as it goes it was to the pilot's credit to have advised this course and to the master's credit that he took it, in spite of some caution on the part of the Port of London Authority.

The next question on which the parties are not at one is as to whether the pumps were entirely able to deal with the flow of water through the bulkhead, from No. 1 to No. 2 hold. Substantially, I think, they were. They did not get it under. They did not diminish it. It is not contended they did. It is said the water increased by about a foot from the time the vessel left Hole Haven to the time she was put on the ground at the Mucking. I do not feel we are very safe in such a conclusion, but on the whole I will assume that the water somewhat increased. Whether it increased a foot I do not know: I will assume it somewhat increased. Nevertheless, I am satisfied the increase was never sufficiently substantial to increase the danger of sinking. The vessel lay at Hole Haven through some six hours, and she was able to get up to Mucking without any large or alarming increase in the amount of water in No. 2 hold. These are the facts in regard to that part of the case.

In addition to that, the pilot remained for a certain number of days. He was away for necessary business on other matters. There were inquests, there had been loss of life; the pilot played the part of salvage pilot and, in the circumstances, was taking the responsibility for movements during the best part of 10 days, which included the removing of the vessel from Mucking Flats after a certain amount of cargo had been discharged, and moving her up the river on her way to Tilbury Dock. He did not take her all the way because the matter came within the jurisdiction of another pilot, but he took her up to the limits of his own district. Throughout that time he gave his advice not only honestly but promptly and wisely. Nevertheless, in my judgment, assuming all the facts to be as I have said, £700 is enough.

I think the pilot has been a little misled, in his own mind, by looking too much at the value of the property at stake. It is substantial — £278,000, largely cargo, undoubtedly a considerable value—but in my judgment, in a case such as this, except that one pays regard to the fact that the service is rendered to property of great value as increasing the responsibility and increasing the fund out of which the Court can give an adequate reward, I do not think one can in any way go on to say that a percentage should be awarded. The truth is the pilot was acting towards a fund or property in some danger and in an awkward situation as an adviser. He was not taking risks as to either of two matters which have prominently been put before the

Court. He was not taking any especial personal risk, or risk to his own life, nor was he risking valuable property in effecting the services.

It is suggested that he was risking his reputation. Mr. Batten has said everything that is to be said on that topic as, upon all the other parts of the case, he has given the greatest assistance, but I think I am satisfied that the pilot was not risking his reputation. No underwriter would or could have blamed this very experienced pilot if, having done his best and given the best possible advice, the ship had not come, as she did, into safety. This risk of loss of reputation was not there; and therefore the Court cannot accede to the argument that on that score the award should be increased. But, whatever reason there is for this argument—I do not think it exists, but if there is one—I should still hold that £700 is a substantial remuneration for that which was done on this occasion.

The weather was not bad, but it was not good weather for a vessel in this condition to be in the place the *Matatua* was in. It was not weather which would give rise to the difficulties and dangers which really bad weather would give rise to. Of course there was the chance of worse weather coming on, and that was the very reason for a prompt giving of advice and prompt movement resulting from that advice, but it was not weather which gave rise to imminent danger or risk in the rendering of these services.

I hold that the tender of £700 is adequate in the circumstances as a salvage award.

Monday, Oct. 27, 1924.

It was announced that, by agreement, there would be no order as to costs.

ADMIRALTY DIVISION.

Tuesday, Oct. 21, 1924.

THE "GALATA."

Before Mr. Justice ROCHE, sitting with Captain T GOLDING, C.B.E., and Captain A. H. RILEY, Elder Brethren of Trinity House.

Overtaking collision in River Scheldt — Attempt of overtaking ship to pass vessel bound up and vessel bound down at same time at close quarters held to be negligent navigation.

In this case, the owners of the steamship *Startforth*, of Weymouth, sued the owners of the steamship *Galata*, of Danzig, to recover damages arising out of a collision in Austruweel Roads, River Scheldt, shortly before midnight on Dec. 4, 1923. The defendants denied liability.

Mr. A. D. Bateson, K.C., and Mr. E. A. Digby (instructed by Messrs. Thomas Cooper & Co.) appeared for the plaintiffs; and Mr. D. Stephens, K.C., and Mr. A. T. Bucknill (instructed by Messrs. Stokes & Stokes) represented the defendants.

According to the plaintiffs' case, shortly before 11 45 p.m. on Dec. 4, 1923, the *Startforth*, an iron twin-screw steamship of 172 tons gross and 125 ft. in length, was in the Austruweel Roads, River Scheldt, on a voyage from Antwerp to Norwich, laden with a cargo of about 182 tons of wire rods. The weather was dark but clear, the wind S.E. a moderate breeze, and the tide flood of a force of from two to three knots. The *Startforth*, which was in charge of a duly licensed pilot, was on a down-river course keeping to the starboard side of the channel and proceeding at full speed, making about six knots through the water. She was exhibiting the regulation masthead (single), side and stern lights, which were burning brightly; and a good look-out was being kept.

In these circumstances the *Galata*, which had come out from Royers Sluice and was overtaking the *Startforth*, was particularly noticed bearing about a point on the starboard quarter and distant about 400 ft. The *Startforth* kept her course and speed: but as the *Galata*, which appeared to be on a slightly converging course to the *Startforth*, was proceeding at speed close past the starboard side of the *Startforth*, the head of the latter was drawn towards the *Galata*. The helm of the *Startforth* was immediately put hard-a-starboard and her port engines full speed astern, but the *Galata* struck with her port side the starboard side amidships of the *Startforth*, doing damage. The starboard engine of the *Startforth* was then put full speed astern, but the *Startforth* was carried along a short distance in contact with the *Galata*, when she cleared and commenced dropping astern. The *Galata*, however, acting as if under a port helm, then struck with her port quarter the starboard bow of the *Startforth*, doing further damage and causing the *Startforth* to heel over heavily and to sheer to port. In consequence of the collisions and notwithstanding that the helm of the *Startforth* was put hard-a-port, her port engine full ahead and the starboard engine kept working full astern and the port engine then also reversed, the *Startforth* collided with the steamship *Ravensrock*, which was on her port side, and afterwards collided with that vessel's stern tug, doing and receiving further damage. Just before the collision with the *Ravensrock* the *Startforth* sounded a short blast on her whistle.

Plaintiffs pleaded that those responsible for the navigation of the *Galata* were negligent in that they failed to keep a good look-out; failed to keep clear of the *Startforth*; improperly and at an improper time attempted to pass the *Startforth*; proceeded at an excessive speed and failed to case,

stop or reverse their engines in due time or at all; improperly and at an improper time ported their helm and/or improperly allowed the port quarter of their vessel to strike the *Startforth* on her starboard bow; failed to sound the appropriate or any whistle signals and failed to indicate by any signal that they desired to pass; and failed to comply with Arts. 16, 19 and 27 of the regulations for the navigation of the River Scheldt and Arts. 22, 23, 24, 27, 28 and 29 of the Collision Regulations.

The case for the defendants was that shortly before 11 32 p.m. the *Galata*, a steel screw steamship of 2648 tons gross and 292 ft. long, when on a voyage from Antwerp to the Mediterranean with a general cargo, was proceeding down the River Scheldt near Austruweel in charge of a licensed pilot. The weather was clear with a light S.W. wind, and the tide was flood of strong force. The *Galata* was proceeding down on her own starboard side of mid-channel and was making about 7½-8 knots with engines working at full speed ahead. The *Galata* was duly exhibiting the regulation masthead lights and side lights and a fixed stern light, all of which were burning brightly; and a good look-out was being kept.

Those in charge of the *Galata*, when leaving the locks of the Antwerp Docks, had observed the masthead and green lights of the *Startforth* about two or three ship's lengths distant and bearing about ahead. The *Startforth* had passed down ahead of the *Galata* and had shut in her masthead and green lights and had opened her stern light to the *Galata*; and the *Galata*, after getting on a course down-river, gradually overtook the *Startforth* and was shaping to pass all clear to the northward of her. The navigation lights of the steamship *Ravensrock* and her tugs were also visible to those in charge of the *Galata* and were bearing on their port bow and in a position to pass all clear port-to-port with the *Startforth* and *Galata*.

In these circumstances, when the *Galata* was passing about 100 yds. to the northward of the *Startforth* (whose stern light had closed in and masthead and green lights were now open to the *Galata*) those in charge of the *Galata* observed that the *Startforth* was closing on the *Galata* as if under port helm, causing risk of collision. They at once loudly hailed the *Startforth*, and when the *Startforth* continued to come towards them they put their engines slow ahead. Immediately afterwards the bluff of the *Startforth's* starboard bow struck the port side aft of the *Galata*, doing no damage to the *Galata*. The *Startforth* then cleared the *Galata* as if under starboard helm, and kept on at speed and sounded two short blasts and subsequently collided with the *Ravensrock*, which was on the south side of the channel.

Defendants alleged that those in charge of the *Startforth* were negligent in that they did not keep a good look-out; did not keep their course and speed; improperly ported their helm; failed to indicate by whistle signal the course or courses taken by them to avoid collision; and did not obey Arts. 21, 27, 28 and 29 of the Collision Regulations.

The defendants further pleaded that, if the collision between the *Startforth* and the *Galata* was contributed to by the negligence of those in charge of the *Galata*, the subsequent collisions between the *Startforth* and the *Ravensrock* and her tug were not the consequence of the collision between the *Startforth* and the *Galata*.

JUDGMENT.

Mr. Justice Roche, in giving judgment, said: This is a damage suit brought by the owners of the steamship *Startforth* against the owners of the steamship *Galata*. The collision took place about midnight on Dec. 4, 1923, and at a time when the two vessels were outward bound from Antwerp. They had left the docks at Antwerp by different exits and were proceeding down Austruweel Roads, a reach of the River Scheldt immediately below the entrances to the Antwerp Docks. There is no dispute about the weather; it was a fine night.

In addition to the two vessels the owners of which are parties to this suit there was a third vessel involved and whose movements must be dealt with. She was the steamship *Ravensrock*, which was proceeding up-river towards Antwerp with a tug ahead and a tug astern.

The size of the vessels is not unimportant. The *Ravensrock* was the largest of the three, her length being about 400 ft. The defendants' vessel, the *Galata*, was the next largest with a length of 292 ft. The *Startforth*, the plaintiffs' vessel, was small, being 125 ft. in length.

At the beginning of the proceedings the *Startforth* was further down-river than the *Galata*. The *Galata* was the overtaking ship and the *Startforth* the overtaken vessel. The *Startforth* and the *Galata*, both straightening down the Austruweel Roads, proceeded down on the north side of the navigable channel, that is, well over to the north shore. The *Startforth* was not a great way ahead of the *Galata*. The distance, I think, has been exaggerated by some of the witnesses. I think it was a matter of lengths. The *Galata* was proceeding at about nine knots; the *Startforth* at about six knots. That is to say, the speed of the *Galata* was about one-third greater than that of the *Startforth*.

The position at the time of the collision was that the *Galata* and the up-coming *Ravensrock* were as nearly as possible alongside of one another in the act of passing. The *Startforth* was between the two; and about the time the collision took place the *Galata* had begun to pass the *Startforth* so that the stem of the *Startforth* was about amidships of the *Galata*. There was first a collision between the *Startforth* and the *Galata*. The *Startforth* struck or fell alongside the port side of the *Galata* and then sheered off and came in collision with the *Ravensrock*. The question is how that came about and whose fault it was.

The owners of the *Ravensrock* are not

parties to the suit; and I have heard only one witness from that vessel, the pilot, who imperfectly understands English. But as between the parties before the Court the responsibility for what took place, in my judgment, rested with the *Galata*.

There have been various estimates of the distance at which the three vessels were passing. There are witnesses who put the vessels at a safe distance until something very sudden and unexpected happened. There are other witnesses who put the vessels much closer. All the probabilities of the case, judging from what happened, and all the nautical probabilities of the case, as I am advised, point to the conclusion that the vessels were in close proximity, in dangerous proximity, the one to the other.

The fact is that the *Galata*, which could, and, as I am advised, ought to have moderated her speed, so as not to pass the *Startforth* going down and the *Ravensrock* coming up, at one and the same time, instead of doing that proceeded to pass them at one and the same time and did so at very close quarters. Those responsible for the navigation of the *Galata* made a party of three when it was dangerous to do so. That involves a finding of negligent navigation against those responsible for the *Galata*.

Is any negligence established against the *Startforth*? That depends upon consideration of the question: Given a proximity of the vessels such as I have found, why was there first a collision between the *Startforth* and the *Galata* and a second collision between the *Startforth* and the *Ravensrock*?

It is suggested that the *Startforth* ported and did in fact port. I am not satisfied that she ever did port and I am not prepared to find that she did. But even if I were satisfied that the *Startforth* did port in the difficult situation to give more room to the *Ravensrock*, I should not find that it was a negligent porting. A very difficult situation was created and such action, in my judgment, would not be negligent.

There is another view put forward, namely, that the converging of the *Startforth* and the *Galata* was due to suction. Suction admittedly is a very difficult matter; and I am advised that it is difficult, if not impossible, to arrive at a conclusion as to whether the actual contact was due to suction.

Therefore I remain on the solid basis, as it seems to me, that there was a situation of difficulty created which ultimately led to the collision without negligence on the part of the *Startforth* and with negligence on the part of those navigating the *Galata*.

On that ground I hold the *Galata* alone to blame.

It is obvious from what I have said that the breach of the rule which is the basis of the *Galata's* responsibility is that she, the overtaking vessel, did not keep clear of the *Startforth*, the overtaken vessel, but navigated too close to her.

I should mention an argument presented by Mr. Stephens that, assuming a position of danger was created by the *Galata*, those on board the *Startforth* ought to have become aware of it and ought to have taken action by stopping or reversing to meet the difficulty.

I do not accede to that argument and I am advised that to have so acted would have raised great nautical difficulties. The position had not been reached when the *Galata* from the overtaking ship had become the overtaken ship; and it was not to be expected that the *Startforth* would give way.

I should add that the collision with the *Ravensrock* followed from the close proximity which had been created for the *Startforth* by the *Galata*.

ADMIRALTY DIVISION.

Thursday, Oct. 23, 1924.

THE "CLEANTHIS."

Before Mr. Justice ROCHE, sitting with Captain O. P. MARSHALL, C.B.E., and Captain A. MORRELL, Elder Brethren of Trinity House.

Collision between steamers moored alongside each other to mole in Gibraltar Harbour — Sudden gale — Whether steps taken with reasonable dispatch by outside vessel to get clear — Mooring ropes: whether defective.

In this case the owners of the Newcastle steamship *Bedeburn* sued the owners of the Greek steamship *Cleanthis* to recover damages arising out of a collision between the two vessels at Gibraltar on Dec. 30, 1922. The defendants denied liability.

Mr. A. D. Bateson, K.C., and Mr. Lewis Noad (instructed by Messrs. Botterell, Roche & Temperley, of Newcastle, Messrs. Botterell & Roche, agents) appeared for the plaintiffs; and Mr. D. Stephens, K.C., and Mr. H. C. S. Dumas (instructed by Messrs. Holman, Fenwick & Willan) represented the defendants.

According to the plaintiffs' case, shortly before 9 45 a.m. on Dec. 30, 1922, the *Bedeburn*, a steel screw steamship of 3121 tons gross and 315 ft. in length, laden with a cargo of coal, was lying moored to the North Mole, Gibraltar Harbour. The wind was S.W. strong, and the weather overcast. The *Bedeburn*, safely and securely moored, was lying with her starboard side to the quay, heading to the northward with the steamship *Cleanthis* moored along her port side, heading to the southward, for the purpose of bunkering. A good look-out was being kept.

In these circumstances, as the wind and south-westerly swell were increasing, causing the *Cleanthis* to bump against the *Bedeburn*, those on board the *Cleanthis* were requested to move their vessel. Shortly afterwards, the *Cleanthis*, having failed to move, began to range and bump violently, driving the *Bedeburn* against the quay and doing damage. Those on board her were accordingly again requested to move, written

notice of damage was given to her master and a signal for tugs was hoisted by the *Bedeburn;* but the *Cleanthis* remained alongside the *Bedeburn,* ranging and bumping heavily until about 12 30 p.m., when the *Cleanthis,* in shifting away from the *Bedeburn,* assisted by tugs, was so negligently manœuvred that she, with her port bow, collided with and dragged along the port side of the *Bedeburn,* doing further damage.

Plaintiffs alleged that those on board the *Cleanthis* negligently and improperly failed to keep a good look-out and failed to keep clear; failed to moor their vessel properly and efficiently and/or to tend their moorings; failed to move their vessel away from the *Bedeburn* before the wind and swell increased so that she could not lie alongside in safety; continued to lie alongside after being requested to move; failed to take measures to procure tug assistance when the weather became threatening and the swell indicated an approaching S.W. gale; and caused or allowed their vessel to fall down upon and with her port bow collide with and sweep along the port side of the *Bedeburn* when moving away.

The defendants denied that the collisions and damage were caused or contributed to by any negligent or improper navigation of the *Cleanthis* and said that the collisions could not have been avoided by the exercise of ordinary or reasonable care, caution and maritime skill on the part of those in charge of the *Cleanthis.*

Their case was that at 9 30 a.m. the *Cleanthis,* a steel screw steamship of 4152 tons gross and 375 ft. in length, was in Gibraltar Harbour, for the purpose of bunkering, on a voyage from Catania to Montevideo. The weather was clear, the wind practically a calm. The *Cleanthis* was lying alongside and outside of the *Bedeburn* which was lying moored with her starboard side to the quay of the Western arm of the North Mole. The port side of the *Cleanthis* was to the port side of the *Bedeburn* and the *Cleanthis* was properly moored fore and aft with ropes out to the quay wall and with fenders out between the two vessels. A good look-out was being kept.

In these circumstances a south-westerly gale suddenly sprang up, with squalls of hurricane force, causing a rough sea; and the two vessels commenced to bump heavily. Thereupon three extra large fenders with ropes warping round them were put out by those on board the *Cleanthis;* and signals were made by flags and whistle for tugs. The wind and sea continuously became worse; and at about 10 a.m. one of the bow ropes of the *Cleanthis* parted; and immediately afterwards one of her after mooring ropes carried away and then the after mooring wire also parted. Steps were immediately taken to make fresh ropes fast ashore. At about 10 30 a.m. two Admiralty tugs arrived and made fast, one at the bow and the other at the stern of the *Cleanthis.* The moorings of the *Cleanthis* were then cast off from the shore and the tugs commenced to tow her away from the *Bedeburn* in order that she might come to anchor in the roads until the weather improved. After the stern tug had pulled the stern of the *Cleanthis* clear of the *Bedeburn,* the tow-rope of the bow tug parted; and nothing could then be done by those on board the *Cleanthis* to prevent the port side of the stem of the *Cleanthis* from falling against the port side of the *Bedeburn.* The stern tug was at once ordered to stop towing. but when it was seen that the *Cleanthis,* which continued to move astern, was in danger of colliding with a steamship moored ahead of the *Bedeburn,* the engines of the *Cleanthis* were put full speed astern and her stern tug was ordered to tow outwards into the bay; and in this way the *Cleanthis* was taken clear of the *Bedeburn.*

JUDGMENT.

Mr. Justice ROCHE, in giving judgment, said: I am assuming that the responsibility lay on the master of the *Cleanthis,* when it became obvious that the operation of coaling should be suspended, to take early steps to remove his vessel from alongside the *Bedeburn.* In my judgment these steps were taken with reasonable dispatch, so soon as the necessity became obvious, and so soon as it ought to have become obvious. About 10 o'clock steps were taken to get tugs. These steps unfortunately did not have any early result: but, in my opinion, the efforts made were adequate and such as a reasonable man could properly rely on. The tugs had been engaged elsewhere and a pilot could not be found; and ultimately the tugs went to the *Cleanthis* without a pilot. They arrived between 11 and 11 30 a.m.; and at 11 30 they began to tow. The delay in obtaining the tugs was in my view due to no default on the part of the defendants; and such damage as was caused by the vessels grinding together, the breaking of certain fenders, and the denting of plates on the *Bedeburn,* was not caused by negligence or default on the part of the defendants' servants.

Two other grounds of claim fall to be considered. It is said that damage was occasioned by breakage of the moorings of the *Cleanthis.* I am not satisfied that the parting of the ropes was due to any defect in the ropes. The ranging of the vessel was sufficient to account for their breakage without any defect in the ropes or default in their management. Still less am I able to say that any damage caused by the parting of the moorings was a separate matter from the ranging.

Another matter is this. The bow tug of the *Cleanthis,* having made fast, towed broad off on her starboard side. When that had been going on for a short time, the tow rope of the tug parted; and the *Cleanthis,* which had been towed some little distance away from the *Bedeburn,* owing to the breakage of the tow rope fell down on the *Bedeburn* and did her further damage—damage distinct from that which had been caused by the vessels ranging alongside one another.

It is said that the parting of the rope

and the consequent damage was due to negligence for which the defendants are responsible. In my opinion it is not so. It is said that the mere fact that the rope parted is of itself, unless explained, evidence of negligence. In my judgment there is not sufficient evidence, apart from explanation, to enable the Court to come to a conclusion adverse to the defendants. But there is evidence with regard to the rope which rebuts any suggestion of negligence. The rope was a new rope; and I am advised that in the state of weather and in the swell that prevailed, with the tug towing broad off as this tug was doing, a strain might be brought on the rope without any negligence.

The result is that my judgment must be for the defendants.

KING'S BENCH DIVISION.

Tuesday, Oct. 14, 1924.

ATTORNEY-GENERAL v. ATTFIELD AND OTHERS.

Before Lord DARLING, sitting with a SPECIAL JURY.

Customs Acts — Export prohibitions — Attempt to export machine guns — Penalties—Customs and Inland Revenue Act, 1879, Sect. 8 — Finance Act, 1921, Sect. 17 — Customs Consolidation Act, 1876, Sect. 186 — Trading with the Enemy and Export of Prohibited Goods Act, 1916, Sect. 3 (b).

In this case the Crown sought to recover heavy penalties under the Customs Acts for attempting to export machine guns.

There were four defendants — Captain Cecil Herbert Attfield, James Herbert Attfield, Charles Philip Hinman, and Frederick Gerley Firmin.

Mr. Harold Morris, K.C., with whom was Mr. W. Bowstead, appeared for the Attorney-General; Sir Henry Curtis Bennett, K.C., and Mr. Walter Frampton represented Hinman; Mr. J. D. Cassels, K.C., and Mr. J. A. C. Keeves were for the Attfields; and Mr. Eustace Fulton and Mr. H. Maddocks appeared for Firmin.

Mr. MORRIS, for the Customs authorities, said the Attorney-General was seeking to recover penalties which all the defendants had forfeited for being knowingly concerned in carrying and removing machine guns and machine gun mounts, the exportation of which was prohibited. There were four counts, the first of which was against all the defendants, and represented a claim for £15,960. The other counts involved smaller amounts.

Cecil Herbert Attfield, continued Mr. Morris, was the son of the other Attfield, and in August, 1923, he interviewed a Mr. Yapp, of Messrs. Vickers, Ltd., the arms manufacturers, with regard to the purchase of machine guns. Mr. Yapp pointed out to him that before guns could be exported from this country a licence from the Board of Trade was necessary. Captain Attfield said he held a registration licence issued by the police. As this was not sufficient, there was considerable discussion on the subject. After subsequent interviews, on Apr. 9 last Captain Attfield entered into an agreement with Messrs. Vickers to purchase 56 machine guns, 28 sets of spare parts, and 27 extra barrels, the guns costing £95 each. On Apr. 16 a similar contract was agreed to for the purchase of 250 re-conditioned second-hand Scarf mountings at £11 each. Throughout all the negotiations Mr. Yapp pointed out to Captain Attfield that he would have to get a licence from the Board of Trade before he could export the arms. The Attfields made application to the Board of Trade to export 5000 rounds of ammunition to Latvia, 56 machine guns to Brazil, and 250 Scarf mountings to Holland, but none of these applications was granted. In April Hinman, who was a yachtsman, went to West Mersea, a small village near Colchester, and asked a Mr. Wyatt if he could get for him a fishing smack capable of carrying 10 to 12 tons. Mr. Wyatt mentioned a boat called the *Edith Francis*, and £160 was the price which Hinman agreed to pay for this boat. On May 10 there was a trial trip; the name of the boat had been painted out and the money was paid over to Mr. Wyatt.

Captain Attfield was a member of the Junior Army and Navy Club, London, and that address was on a telegram which was sent to Amsterdam on May 7, and which said: "Trucks dispatched to-day." This was signed "Forstness." There were twelve cases, containing 56 machine guns, which were delivered by Messrs. Vickers to the Attfields' address, and which were represented to be photographic parts, and the case of the Attorney-General was that they were put on board the *Edith Francis* at Hewitt's Wharf. One of the witnesses was a man who, at the time, was taking a census of traffic in and out of Barking Creek, and who would say that at 5 55 on the morning of May 12 an unnamed sailing boat, with fixed mast, passed into the Creek from Hewitt's Wharf, and at 8 20 a.m. on May 14, he would also say, a sailing boat, with mast fixed, passed out of Barking Creek, the skipper giving Erith as its destination. Apparently an arrangement was made that a Dutch steamer should leave Rotterdam and meet the unnamed sailing boat near the Gabbard Lightship, which was about 105 miles from Barking Creek. The sailing boat was, in fact, met by the steamship *Helder* on May 15 and unpacked machine guns were transferred to the steamer.

Lord DARLING asked if it were denied that the guns were so transferred, and Mr. CASSELS replied: The whole thing is denied in the pleadings.

Mr. MORRIS stated that the Attorney-General was claiming on each count three times the value of the goods that were ex-